Supreme Court, U. S.
FILED
OCT 6 1980
MICHAEL RODAK, JR., CLERK

NO. 80 - 190

In the Supreme Court of the United States

October Term, 1980

HERMAN DIAMOND, Petitioner,

v.

UNITED STATES OF AMERICA AND ET AL. Respondent,

v.

UNITED STATES OF AMERICA and

UNITED STATES ARMY CORPS OF ENGINEERS, Savannah, Ga., Respondent,

v.

Dr. FREDRICK C. MARLAND, State of Georgia, ET AL, Respondent.

REPLY BRIEF FOR PETITIONER

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No. 80-190

In the Supreme Court of the United States

OCTOBER TERM, 1980

HERMAN DIAMOND, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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1. The respondents brief,refers to Petitioner's lands as being marshland,is an erronious conclusion of facts..

The high ground of petitioner was proven to be all high ground and the marshland in question was eastward on Mr. Barrets property who was granted a permit by the U.S.Engineers.(T.p.31,5/28/73).and in CA 477-80 (T.p.70-77,5/10/79). Petitioners EXhibits,test borings show the property as being above the required elevatio-for jurisdiction, (Pl Ex # 3, 8/24/77) and (Pl Ex #6 & 18) geoligist reports. clearly testified that the elevations were above 8 ft or more before fill to 11 ft. A more accurate survey is (pl Ex # 28,1/3/78) the permit showing the whole area. The area of jurisdiction by the National

Oceanic and Atmospheric map of the Richardson Creek as being, 7.1 feet at Mean High Tide.

The Complaint CA 3092 vacated upon consolidation, in December 4,1975(PB.8a, 9a) is without authority of Congress. Title 33 U.S.C.§ 406,(1a) that enforcement for violation of 33 U.S.C.§ 403, must be instituted under the direction of the Attorney General of the United States and removal of the obstruction by injunction.

The complaint CA 3092 (4a-7a) was initiated by the local U.S.Asst. Attorney Mr. Lamar Walter for an injunction without having any charges brought against Petitioner Diamond for misdemeanor charges nor was he ever granted a jury trial.

Consolidation requires a new Judgment Ramswick v. Messner, 200 Minn 299, 274 N.W.179 .

Reines v. Philadephia Gas Works, 107 Pa. 422.

No Judgment has been issued since December 4,1975,

On June 17,1980, Petitioner filed a motion for dismissal or jury trial, and the Government Attorney's did not respond and on September 5,1980 Petioner filed a motion to dismiss and judgment for counterclaim for damages. The lower Court, has not ruled after almost 5 years.

Jurisdiction of this Complaint does not lie pursuant to 28 U.S.C.§ 1345. Therefore this Honorable Court must exercise its power of supervision, to deny the lower District Court jurisdiction over an unauthorized, illegal and in violation of

Petitioner's constitutional rights as is the 1802 Compact between the Federal Government and the State of Georgia Whereas the Complaint violates these agreements as in the June decision of the U.S. Supreme Court on the Fort Lariamie Treaty of 1877 was violated and property illegaly seized, as was Petitioners, by injunction, and thereby lies a claim for damages.

1802"Georgia Cession" (American State Papers (class VIII)- Public Lands, Document No. 69 Loerie Ed. 1834) (P.App. 1a-2a).

2. The statement that Petitioner filed an after the fact permit for further fill is a false statement of facts, (Pl.Ex # 12, 1/3/78) a letter from the U.S.District Engineer, clealy indicates that the permit was for a bulkhead and a very small area of fill,(Pl.Ex # 28,1/3/78) is the aplicATION FOR A PERMIT, and no mention was made that the permit was an after the fact, and the denial of a permit is not a violation of 33 U.S.C. § 403, U.S. v. Kane, 602 F. 2d 490-494

Rule 60 (b) was timely filed as to jurisdiction and fraud, only three months after consolidation and where no judgment has ever been issued in CA 3092 since consolidation the vacated judgment is moot.

The denial of the permit in CV 475-221 was judicial error, as the District Engineer never signed the letter of denial, (Gt Ex # 3,4/17/76) letter to

Petitioner, must have the official signature to be legal document.

The U.S.District Engineer also stated that no survey was ever taken to determine whether Petitioner's property required a permit, (T. p.32-33,4/17/76).

The U.S.District Court in Washington, D.C. found that the U.S. Engineers had acted unlawfully and ordered the Secretary of the Army to grandfather all fill as of July 25,1975, in the Federal Register, which would cover any violation that would be charged in the complaint, CA 3092, as wetlands and marshlands are one and the same,

NRDC v. CALLAWAY, ET AL. 392 F. Supp. 686.

Therefore CV 475-221 must be dismissed.

3. The Recusal of the late Honorable Judge Alexander A. Lawrence was a valid one and with good reason, the Title 28 U.S.C.§ 144 and 28 U.S.C.§ 455, The Court did not grant a hearing to review the complaint of recusal, he ruled from the bench that he Application for disqualification was overruled, he did it once and he would do it again, (T.p.2-3,8/24/77).

28 U.S.C.§§ 144, states that a Judge can proceed no further therein, but anoth-Judge shall be assigned to hear such proceedings.

28 U.S.C.§§ 455, (a) shall disqualify himself in any proceedings in which his impartialty might be reasonably be questioned.

Therefore all Judgments issued in the above cases are without jurisdiction.

4. The original judgment of April 17, 1974, denied the Petitioner, the right to construction, to protect his property and denied him maintenance of his dock,dock-house and 40 feet of walkway to the high ground,after these many years decayed, rotted away and many areas of the property was washed away due to high tides and storms, this Judgments is in violation of Articles 4 and 5 of the U.S.Constitution, of unlawfull seizure and without due compensation. Judgment (PB 20a-21a).

The Court of Appeals Fifth Circuit, found the original Judgment faulty and made some correction since the docks and walkways were under authorized permits and in the Courts order of NRDC v. Calla-away, 392 F. Supp. 686, where no permits were required untill after July 25,1975 The complaint CA 3092 is a mere nullity.

Where witnesses testify as to public matters, there is no privileged information,as to fraud and perjury, it is for a jury to decide based on the evidence submitted.

Administrative Law:§ 127, 1 Am Jur 2

To declare what shall constitute a crime and how it shall be punished is a power vested solely and exclusively in the legislature, and it may not be deligated to any other body or agency.

The Complaint 3092 is such an instrument deligating the manner in which an assummed violation of the law requesting an injunction over Petitioner's property, not authorized by law, 33 U.S.C.§ 406 .

The U.S.District Court has refused to allow Petitioner to recall all witnesses and confront them with the evidence to support his charges of conspiracy and fraud. (T.p.1-94,5/10/79).(T.p.2-11,9/30/1977)and the courts statement that he had denied petitioner right to open hearings.

For the above stated reasons and for the violations of petitioners Constitutional Rights and denial of Due process and equal protection and for the violation of the 1802 Compact between the Federal Government and the State of Georgia, this petitioner prays that this Honorable Court will honor his request for a writ of Certiorari.

Respectfully Submitted

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APPENDIX

§ 406. Penalty for wrongful construction of bridges, piers, etc.; removal of structures

Every person and every corporation that shall violate any of the provisions of sections 401, 403, and 404 of this title or any rule or regulation made by the Secretary of the Army in pursuance of the provisions of section 404 of this title shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $2,500 nor less than $500, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court. And further, the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any district court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States. Mar. 3, 1899, c. 425, § 12, 30 Stat. 1151; Feb. 20, 1900, c. 23, § 2, 31 Stat. 32; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167.